

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

IN THE MATTER OF:)	DOCKET NO. 10-016
)	
FirstLight Hydro Generating Company;)	FINDINGS OF VIOLATION
FirstLight Power Resources, Inc.)	
NPDES Permit No. MA0035530)	AND
)	
Proceedings under Sections 308 and)	ORDER FOR COMPLIANCE
309(a)(3) of the Clean Water Act,)	
as amended, 33 U.S.C. §§ 1318 and)	
1319(a)(3))	

I. STATUTORY AUTHORITY

The following Findings are made and ORDER issued pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act, as amended (the "Act"), 33 U.S.C. §§ 1318 and 1319(a)(3). Section 309(a)(3) of the Act grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318 and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. § 1342. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of any information required to carry out the objectives of the Act. These authorities have been delegated to EPA Region I's Administrator, and in turn to the Director of EPA, Region I's Office of Environmental Stewardship ("Director").

The Order herein is based on findings of violation of Section 301 of the Act, 33 U.S.C. § 1311. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), the Order provides a schedule for compliance which the Director has determined to be reasonable.

II. DEFINITIONS

Unless otherwise defined herein, terms used in this Order shall have the meaning given to those terms in the Act, 33 U.S.C. § 1251 *et seq.*, the regulations promulgated thereunder, and any applicable NPDES permit. For the purposes of this Order, "NPDES Permit" means FirstLight Hydro Generating Company's NPDES Permit, No. MA0035530, and all amendments or modifications thereto and renewals thereof as are applicable and in effect at the time.

III. FINDINGS

The Director makes the following findings of fact:

1. FirstLight Power Resources, Inc. and FirstLight Hydro Generating Company (together, hereinafter "FirstLight"), are each a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
2. FirstLight is the owner and operator of the Northfield Mountain Pumped Storage Hydroelectric Facility located in Northfield, Massachusetts (the "Facility").
3. The Federal Energy Regulatory Commission issued License No. 2485 authorizing the operation of the Facility in May, 1968.
4. On September 30, 1996, the Facility's previous owner, Northeast Utilities Service Company was issued NPDES Permit No. MA0035530 ("NPDES Permit") by the EPA under the authority of Section 402 of the Act, 33 U.S.C. § 1342. The NPDES Permit regulates the discharges from floor and associated drains. It expired on September 30, 2000, but remains in effect pursuant to 40 C.F.R. § 122.6 due to a timely reapplication.
5. The NPDES Permit authorizes FirstLight to discharge pollutants from outfall 001 to the Connecticut River provided the discharges do not cause or contribute to violations of federal or state water quality standards.
6. The Connecticut River flows to Long Island Sound. Both are navigable waters of the United States as defined in 40 CFR § 122.2 and, therefore, navigable waters under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

7. On May 1, 2010 FirstLight began to draw down the water levels in the pumped-storage reservoir.
8. On May 3, 2010 FirstLight notified EPA that accumulated silt and sediments from the pumped-storage reservoir were being drawn down and were being discharged to the Connecticut River.
9. On July 15, 2010, EPA inspected the Facility in response to a citizen complaint regarding the discharge of sediments to the Connecticut River.
10. On July 20, 2010, EPA issued an Information Request pursuant to Section 308 of the Act requesting information regarding alternative methods of stopping or mitigating the quantity and impacts of the discharges of accumulated silt and sediments.
11. FirstLight continues to remove accumulated silt and sediments from the Facility's tailrace tunnel through mechanical excavation, mixing the accumulated silt and sediments with river water, and then discharging it to the Connecticut River through an outfall pipe.
12. The accumulated silt and sediments that FirstLight is discharging to the Connecticut River are pollutants within the meaning of Section 502(6) of the Act, 33.U.S.C. § 1362(6).
13. The outfall through which FirstLight is discharging accumulated silt and sediments to the Connecticut River is a point source within the meaning of Section 502(14) of the Act, 33.U.S.C. § 1362(14).
14. The NPDES Permit does not authorize FirstLight to discharge silt and sediments that have accumulated in the Facility.
15. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants to waters of the United States except, among other things, in compliance with the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, or a permit issued pursuant to Section 404 of the Act, 33 U.S. § 1344.
16. FirstLight has not received authority under the Act to discharge accumulated silt and sediments to waters of the United States.

17. FirstLight's discharge to the Connecticut River of accumulated silt and sediments without authorization to do so under the Act occurred, and continues to occur, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

IV. ORDER

Accordingly, pursuant to Sections 308 and 309(a)(3) of the Act, it is hereby ordered that :

1. FirstLight shall immediately cease the discharge of silt, sediments, and other pollutants from the Facility to the Connecticut River and all other waters of the United States in concentrations greater than those contained in water passing through the Facility while power generation at the Facility is occurring.
2. Within 24 hours following the cessation of discharges in accordance with Paragraph IV.1 of this Order, FirstLight shall submit a written notification to EPA via e-mail and certified mail that it has ceased discharges in accordance with this Order.
3. Within 10 days of receipt of this Order, FirstLight shall submit a description and schedule for implementation of the technology(ies) that it has chosen to reduce the concentration of silt and sediments in all discharges from the Facility to the concentrations of silt and sediments contained in water passing through the Facility while power generation at the Facility is occurring.
4. By August 10, 2010, FirstLight shall provide EPA with an estimate of the volume of solids in cubic yards that have been discharged to the Connecticut River from the Facility since May 1, 2010 and the estimated volume of sediments that remain to be removed from the Facility. The estimates shall be accompanied by FirstLight's plan to address solids accumulations in the Connecticut River that occurred during the draining of the pumped-storage reservoir and subsequent cleaning operations. The plan shall include a description of each alternative that was

considered, the costs associated with their implementation, a description of any federal, state, or local permits required for implementation, the ultimate fate of solids removed, and a schedule for the implementation of the recommended plan.

5. By November 1, 2010, FirstLight shall submit a report identifying the measures that it will adopt to prevent discharges of sediments associated with draining the pumped-storage reservoir in the future and a schedule for their implementation.
6. The implementation schedules submitted pursuant to Paragraph IV.3., IV.4., and IV.5. of this Order shall be incorporated and enforceable hereunder upon the implementation schedules' approval by, and as amended by, EPA.
7. Beginning August 17, 2010, and by the first and third Tuesday of every subsequent month, and continuing through the month when the Facility is fully operational, FirstLight shall submit status reports delineating its progress in implementing the provisions of this Order. At a minimum, these progress reports shall include a description of:
 - a. The activities undertaken during the two-week period prior to the submission of the report directed at achieving compliance with this Order;
 - b. The status of all plans, reports, and other deliverables required to be submitted by this Order during the two-week period prior to the submission of the report; and
 - c. The activities expected to be completed during the next two-week period in order to achieve compliance with this Order.

V. NOTIFICATION PROCEDURES

1. Where this Order requires a specific action to be performed within a certain time frame, FirstLight shall submit a written notice of compliance or noncompliance with each deadline. Notification of compliance shall be

mailed within fourteen (14) days after each required deadline. The timely submission of a required report shall satisfy the requirement that a notice of compliance be submitted.

2. If noncompliance is reported, notification shall include the following information:
 - a. A description of the noncompliance;
 - b. A description of any actions taken or proposed by FirstLight to comply with the lapsed schedule requirements;
 - c. A description of any factors that tend to explain or mitigate the noncompliance; and
 - d. An approximate date by which FirstLight will perform the required action.
3. After a notification of noncompliance has been filed, compliance with the past-due requirement shall be reported by submitting any required documents or providing EPA with a written report indicating that the required action has been achieved.
4. Submissions required by this Order shall be in writing and shall be mailed to the following addresses:

U.S. Environmental Protection Agency
Region I
5 Post Office Square Suite 100 (OES 04-03)
Boston, MA 02109-3912
Attn: Michael Fedak

EPA shall notify FirstLight in writing of any changes to the contact person or address.

VI. GENERAL PROVISIONS

1. FirstLight may, if it desires, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed

by EPA only to the extent set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to FirstLight. FirstLight should carefully read the above-cited regulations before asserting a business confidentiality claim since certain categories of information are not properly the subject of such a claim. For example, the Act provides that "effluent data" shall in all cases be made available to the public. See Section 308(b) of the Act, 33 U.S.C. § 1318(b).

2. EPA reserves the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, as amended, for any violation cited in this Order.
3. This Order shall become effective upon receipt by FirstLight.

08/03/10
Date

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
Environmental Protection Agency, Region I